

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail Express, Priority Mail &
First-Class Package Service
Priority Mail Express, Priority Mail &
First-Class Package Service Contract 36

Docket No. MC2018-153

Competitive Product Prices
Priority Mail Express, Priority Mail &
First-Class Package Service Contract 36
(MC2017-153)
Negotiated Service Agreement

Docket No. CP2018-219

PUBLIC REPRESENTATIVE COMMENTS
ON POSTAL SERVICE REQUEST TO ADD PRIORITY MAIL EXPRESS,
PRIORITY MAIL & FIRST-CLASS PACKAGE SERVICE CONTRACT 36
TO COMPETITIVE PRODUCT LIST

(May 21, 2018)

I. INTRODUCTION

The Public Representative hereby provides comments pursuant to the Commission Notice Initiating Docket(s).¹ In that Notice, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail Express, Priority Mail & First-Class Package Service Contract 36 to the competitive product list.²

¹ Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, May 14, 2018 (Notice).

² USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 36 to Competitive Product List and Notice of Filing Materials Under Seal, May 11, 2018 (Request).

II. BACKGROUND

The Postal Service's Request includes a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), a public (redacted) version of Governors' Decision No. 11-6 and related analysis, a public version of Priority Mail Express, Priority Mail & First-Class Package Service Contract 36, and proposed changes to the Mail Classification Schedule competitive product list with the addition underlined. The Postal Service also filed (under seal) the unredacted version of Governors' Decision No. 11-6, the unredacted contract related to the proposed new product, and supporting financial worksheets.

According to the Postal Service, Priority Mail Express, Priority Mail & First-Class Package Service Contract 36 is a competitive product "not of general applicability within the meaning of 39 U.S.C. § 3632(b)(3)." Request at 1. The Postal Service also maintains that the prices and classification underlying the instant contract are supported by Governors' Decision No. 11-6.³

The effective date of the instant contract is two business days following the day on which the Commission issues all necessary regulatory approval. Request, Attachment B at 8-9. The contract is scheduled to expire three years from the effective date, subject to early termination provisions and other terms and conditions. *Id.* at 9.

III. COMMENTS

The Public Representative has reviewed the Postal Service's Request, including the Statement of Supporting Justification, the contract and financial model filed under seal with the Request. Based upon that review, the Public Representative concludes that Priority Mail Express, Priority Mail & First-Class Package Service Contract 36 should be categorized as a competitive product and added to the competitive product list. In

³ Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors' Decision No. 11-6). See Request, Attachment A.

addition, it appears that the instant contract should generate sufficient revenues to cover costs in its first year, and thereby satisfy 39 U.S.C. § 3633(a) during the first year.

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Priority Mail Express, Priority Mail & First-Class Package Service Contract 36 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to consider whether “the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such powers are categorized as market dominant while all others are categorized as competitive.

The Postal Service makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D at 2. These assertions appear reasonable. Based upon these assertions, the Public Representative concludes that the Postal Service’s Request to add Priority Mail Express, Priority Mail & First-Class Package Service Contract 36 to the competitive product is appropriate.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service’s rates for competitive products must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial model and the contract filed under seal with the Request, it appears that the negotiated prices should generate sufficient revenues to cover costs during the first year of the contract, and therefore meet the requirements of 39 U.S.C. § 3633(a) during the first year.⁴

⁴ The Public Representative observes that the Postal Service’s analysis of cost coverage relies on volume variable cost for mail products, but includes attributable cost for special services. See file *Summary_Public.xlsx*, sheet “Contract_Summary_ExtraServices,” columns G and I. This is most likely because the Commission has accepted the methodology for calculating attributable cost for domestic NSAs only provisionally. See Docket No. ACD2017, Annual Compliance Determination Report, March 29, 2018 at 11. Considering that the revenues estimated for the first year of the contract are substantially

As noted above, Priority Mail Express, Priority Mail & First-Class Package Service Contract 36 is expected to remain in effect for a period of three years. The Postal Service's financial model does not demonstrate that the contract will comply with the requirements of 39 U.S.C. § 3633(a) over the three-year period of the contract. However, the contract includes a mechanism for the annual adjustment of prices, which should help maintain the contract's ability to comply with the requirements of 39 U.S.C. § 3633(a). Request, Attachment B at 7-8. The Commission will have an opportunity to review the revenue, cost and volume data for Priority Mail Express, Priority Mail & First-Class Package Service Contract 36 in the future Annual Compliance Determination (ACD) reports for compliance with 39 U.S.C. § 3633(a).

IV. CONCLUSION

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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higher than its volume variable costs, the Public Representative concludes that the generated revenues should be sufficient to cover the attributable costs.